

EXHIBIT B

In The Matter Of:
UNITED STATES OF AMERICA, v
TODD NEWMAN,

November 27, 2012

SOUTHERN DISTRICT REPORTERS
500 PEARL STREET
NEW YORK, NY 10007
212 805-0330

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1	A. It is.		1	witness to read in from it. If you want to go into on cross if	
2	Q. What do you understand Mr. Kuo to be saying when he says, I		2	he knows nothing about what was actually done, I think you can.	
3	get a non-GAAP GM of 37.8 percent?		3	I don't think it's an improper thing with an exhibit that's in	
4	A. He had taken out that inventory charge and this is the		4	evidence.	
5	number that he got for non-GAAP.		5	Let's bring in the jury.	
6	Q. Let's go to the top of the e-mail.		6	(Jury present)	
7	Who does Mr. Tortora forward that to?		7	THE COURT: We are going to resume the examination of	
8	A. To Todd Newman.		8	Mr. Adondakis by Mr. Zach.	
9	THE COURT: Why don't we take a break here. Let's		9	Go ahead, Mr. Zach.	
10	stop here for an afternoon break. I'll see you in about ten		10	MR. ZACH: Thank you, your Honor.	
11	minutes. Don't discuss the case, of course. But you can use		11	Q. Before we broke Mr. Adondakis, we had been looking at	
12	the restroom, stretch your legs, get a cookie or something.		12	Government Exhibit 805 which had information from an accounting	
13	Thanks.		13	manager at Nvidia being passed along to a variety of people.	
14	All rise for the jury.		14	Do you recall that?	
15	(Jury not present)		15	A. Yes.	
16	THE COURT: Anything we need to discuss?		16	Q. Now, what did you tell Mr. Chiasson about this inside	
17	You have ten minutes. See you in a bit.		17	information that you were getting from Nvidia?	
18	(Recess)		18	A. I explained to him that a friend of Jesse Tortora would be	
19	THE COURT: Let's bring in the jury.		19	getting information from Nvidia through a friend of his who he	
20	MR. NATHANSON: Your Honor, one brief matter.		20	went to church with and that the contact was -- it would have	
21	The last exhibit that the government went over is		21	an Nvidia contact, essentially.	
22	Exhibit 805, and I believe the last question that was just		22	Q. When you say Nvidia contact, did you express where that	
23	asked was whether or not at the top of that e-mail that		23	Nvidia contact worked?	
24	Mr. Tortora forwarded it to Mr. Newman. I don't think that's		24	A. I didn't specifically say at Nvidia, but based on contacts	
25	an appropriate question. Mr. Adondakis isn't on that portion		25	that we had at other companies, I assumed --	
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1	of the e-mail. It's really just a point for summation.		1	MR. WEINGARTEN: Respectfully object.	
2	Mr. Adondakis just said yes, it is and he sees that it is.		2	THE COURT: Hold on.	
3	I mention it now because there are at least two other		3	Did you express where that Nvidia contact worked, yes	
4	exhibits, 810 and 820, that have similar strings that at the		4	or no?	
5	top they get forwarded to Mr. Newman. This witness can't		5	THE WITNESS: No.	
6	possibly add anything to those. He is not on those top		6	THE COURT: Next question.	
7	communications.		7	Q. Had you had a course of dealing in talking about sources of	
8	I just ask that there be no questions about whether or		8	information with Mr. Chiasson that you referred to in a	
9	not Mr. Tortora, after it was forwarded to Mr. Adondakis, then		9	specific way?	
10	forwarded it to Mr. Newman.		10	A. Yes.	
11	THE COURT: But the exhibit is in evidence, so the		11	Q. What was the way that you referred to him?	
12	jury can infer that it was forwarded.		12	A. When I would refer to contacts I would refer to them as	
13	MR. NATHANSON: Sure. There is no reason to ask this		13	those that worked at companies.	
14	witness to show him that part of the e-mail and say, was this		14	Q. When you said that a contact at a company, did that mean	
15	forwarded on to Mr. Newman? It's not something within the		15	that that contact worked at the company?	
16	purview of his knowledge other than the fact that he is seeing		16	A. That's correct.	
17	an e-mail, which I understand is in evidence. It doesn't seem		17	Q. Now, turning to Government Exhibit 810, it's already in	
18	like an appropriate question to ask.		18	evidence, have you seen this document?	
19	MR. ZACH: Your Honor, the documents are in evidence.		19	A. Yes.	
20	The jury is having a lot of documents thrown at them. I am		20	Q. Let's look at the lower e-mail.	
21	asking the question to point out that it was to Mr. Newman.		21	THE COURT: Hold on one second. Just take that down.	
22	There is so many documents coming in, there is nothing wrong		22	I don't have that in. Maybe I just missed it. Does anybody	
23	with the witness reading from it. I don't intend to do it that		23	else who is keeping score have it in? There has been a lot of	
24	much more.		24	documents. I don't suggest that I am infallible on this point.	
25	THE COURT: It's in evidence. I think you can ask a		25	MR. TARLOWE: Our records suggest that it was admitted	

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1	on November 15 through Mr. Tortora.		1	Q. Looking at 812, and going up the lower e-mail.	
2	THE COURT: My problem is my Live Note doesn't go back		2	A. Yup.	
3	that far.		3	MR. ZACH: Can we blow up the top half.	
4	November what day?		4	Q. Looking at this top e-mail, who wrote this?	
5	MR. TARLOWE: November 15.		5	A. Danny Kuo.	
6	THE COURT: Sorry, folks.		6	Q. Who is he sending it to?	
7	MR. NATHANSON: Your Honor, our record also shows that		7	A. He is sending it to Jesse Tortora, John Horvath, Fayad	
8	it's in evidence.		8	Abbasi, and myself.	
9	THE COURT: Go ahead.		9	Q. When is this document dated?	
10	MR. ZACH: Put it up on the screen. Can we look at		10	A. This is April 22, 2009.	
11	the bottom e-mail.		11	Q. How many days before the close of Nvidia's quarter is this?	
12	Q. Who is this e-mail from?		12	A. Four days before the close of the quarter.	
13	A. The bottom e-mail is from Danny Kuo.		13	Q. And in fact what's the subject of this e-mail?	
14	Q. Who is it to?		14	A. Talks about -- the subject is Nvidia.	
15	A. To Victor Dosti.		15	Q. Now, would you read what Mr. Kuo wrote?	
16	Q. Was it later forwarded to you?		16	A. My last check two weeks ago indicated that April quarter	
17	A. Yes.		17	gross margin at 25 percent, after taking another inventory	
18	Q. What does it say?		18	reserve charge. Excluding this charge, April quarter gross	
19	A. Nvidia checks.		19	margin would have been 35 percent. July quarter gross margin	
20	Q. And what did you understand this information to be coming		20	will be guided to mid 30 percent. I will check again today.	
21	from --		21	Q. Where did you understand that information to be coming	
22	A. This was coming through Danny's contact through his friend		22	from?	
23	at Nvidia.		23	A. From the same contact who was an Nvidia insider.	
24	Q. And looking at the date of April 3, where is that in		24	Q. What sorts of numbers are these -- what sorts of numbers	
25	relation to the close of Nvidia's quarter?		25	are being provided to you here?	
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1	A. Shortly before the close of the quarter.		1	A. This particular e-mail talks about gross margins.	
2	Q. And what sort of information is set out in there?		2	Q. And when you get updates like this from Mr. Kuo, what would	
3	A. This is consistent with the format of other e-mails		3	you do with that information?	
4	received from Danny which talks about a revenue estimate for		4	A. I would pass it along to Mr. Chiasson.	
5	the April quarter, a revenue range, should give a read on gross		5	Q. For what reason were you passing it along to Mr. Chiasson?	
6	margin over the weekend, which I assumed meant that the gross		6	A. For the purpose of potentially investing in Nvidia.	
7	margin numbers weren't finalized but he would be getting more		7	Q. Now, turning to Government 813, do you recognize this	
8	information from a sales standpoint. March was flattish month		8	document?	
9	over month and a slight disappointment versus a strong		9	A. Yes.	
10	inventory replenishment in February. There is a still color on		10	MR. ZACH: The government offers 813 into evidence.	
11	how the revenues were coming in in the quarter. Still looking		11	THE COURT: Any objection?	
12	for a back end loaded quarter with April up strongly month over		12	MR. WEINGARTEN: No, your Honor.	
13	month versus March/February levels. Back end loaded meaning		13	THE COURT: Government 813 is received.	
14	that he expected more revenues to occur in the last part of the		14	(Government's Exhibit 813 received in evidence)	
15	month as opposed to the first part of the month. Also begin to		15	Q. Now, let's start by quickly looking at the top.	
16	push out some delivery into next quarter. If that were true,		16	Who is that from?	
17	that would be positive for the company's revenues in the next		17	A. Danny Kuo.	
18	quarter. And that's consistent with the last line, which says,		18	Q. And who is he e-mailing it to?	
19	July quarter, 750 million, initial read. If you compare that		19	A. He is forwarding it to Jesse Tortora, Jon Horvath, Fayad	
20	to the April quarter, which is in the first line, it's higher.		20	Abbasi, and me.	
21	Q. And this is a check relating to the quarter of Nvidia		21	Q. On what day is he forwarding it?	
22	that's about to close at the end of April?		22	A. April 27, 2009.	
23	A. Correct.		23	Q. And how does that relate to the end of the quarter?	
24	Q. Let's look now at Government Exhibit 812.		24	A. It's one day after the close of the quarter.	
25	THE COURT: That one is in. I have that.		25	Q. Let's look at the e-mail that Mr. Kuo was forwarding.	

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1	Q. 3502-7 in your narrower binder with your statements. See		1	hypothesize.	
2	if that refreshes your recollection.		2	THE COURT: Overruled. If those statements that you	
3	A. 3502, which one?		3	read were made, they wouldn't be true.	
4	Q. 3502-7, page 3. The third full paragraph.		4	MR. TARLOWE: Could we say which statements?	
5	(Pause)		5	THE COURT: I think that's fair. What statements were	
6	A. I don't recall saying that specifically. It looks like		6	you referring to, Mr. Weingarten? The one you just read?	
7	these might be notes that were taken, is that right?		7	MR. WEINGARTEN: Yes.	
8	THE COURT: Well, let's not get into that. Just		8	THE COURT: Read it again.	
9	answer the question. Does that refresh your recollection?		9	Q. Let's refer to Mr. Ganek specifically. I'd like to read	
10	A. No, I don't recall saying that specifically, I'm sorry.		10	two, if I may. "Chiasson and Ganek were both interested in the	
11	Q. Let's start from the beginning. Did you implicate Mr.		11	Dell information when Adondakis told them because the	
12	Chiasson in insider trading?		12	information came directly from contacts at Dell." Is that true	
13	A. I told the truth about what happened and I guess does that,		13	as to Mr. Ganek or not true?	
14	I guess that implicates him.		14	A. No, it's not true.	
15	Q. And what about Mr. Brenner?		15	Q. All right, so --	
16	A. Yes.		16	A. There's a part of that statement that's not true.	
17	Q. And what about Mr. Ganek?		17	Q. And it's the one that pertains to Mr. Ganek.	
18	A. I don't know about Mr. Ganek.		18	A. That's right.	
19	Q. Well, if the FBI -- excuse me. Isn't it true that you said		19	Q. And how about, "The Level Global fund and Radar fund were	
20	to the FBI that Chiasson and Ganek were both interested in the		20	both performing low when Chiasson and Ganek decided to make	
21	Dell information when you told them because the information		21	trades based on the information obtained from Goyal." Is that	
22	came directly from contacts at Dell and isn't it also true that		22	true as to Mr. Ganek or not true as to Mr. Ganek?	
23	you --		23	A. True. He made the trades, and the information was from	
24	THE COURT: Wait, let's not do compound. Let's just		24	Goyal.	
25	leave it there.		25	Q. And Ganek decided to make trades based on the information	
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1	A. I honestly don't recall saying that.		1	obtained from Goyal?	
2	Q. Well, forget what you said to them. Is that true or not		2	MR. TARLOWE: Objection.	
3	true?		3	THE COURT: Overruled. Overruled.	
4	A. I'm sorry, is what true or not true?		4	A. He did decide to make the trades and the information was	
5	Q. Chiasson and Ganek -- let me start again. You don't		5	from Goyal, so that's true.	
6	remember whether or not you said that first statement to the		6	Q. So your testimony today is that Ganek is as innocent as the	
7	FBI?		7	driven snow --	
8	A. I don't.		8	MR. TARLOWE: Objection.	
9	Q. Now, do you remember saying that Chiasson and Ganek were		9	THE COURT: Sustained. Sustained.	
10	the, quote, "opposite of discouraging," end of quote, and		10	Q. I believe you testified and your information and plea	
11	wanted to have an edge in regards to Dell's quarterly results		11	agreement reflect that you pled guilty to wrongdoing through	
12	versus expectations. Do you recall saying that to the FBI?		12	the middle of 2010, is that correct?	
13	A. I'm sorry, I don't recall saying that specifically.		13	A. That's correct.	
14	Q. Do you remember saying to the FBI the Level Global fund and		14	Q. What crimes did you commit in 2010?	
15	Radar funds were both trading low and Chiasson and Ganek		15	A. 2010.	
16	decided to make trades based on the information obtained from		16	Q. Yes.	
17	Goyal?		17	A. I was still receiving information from contacts during that	
18	A. I don't remember saying that either.		18	time, so I would assume it was insider trading.	
19	Q. Well, if you did say that, were they truthful statements or		19	Q. And were you sharing that information with anyone at Level	
20	not?		20	Global?	
21	A. I don't think they're a hundred percent true, no.		21	A. Yes.	
22	Q. So if those statements were made to the FBI they wouldn't		22	Q. In 2010?	
23	be a hundred percent true, is that right?		23	A. Yes.	
24	MR. TARLOWE: Objection. One, 403, it's confusing,		24	Q. What information in 2010?	
25	based on the documents being used and, two, he's asking him to		25	A. You know, I honestly don't remember specifically which -- I	

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1	was still speaking with all the contacts in 2010.		1	e-mails.	
2	Q. All right, so there's no doubt that you continued with your		2	Q. Okay. And that's because it went to a wide variety,	
3	contacts with your friends on the board past Level Global,		3	including compliance, right?	
4	correct?		4	A. No.	
5	A. Past Level Global?		5	Q. That's not correct?	
6	Q. Yes.		6	A. That is not correct.	
7	A. I did continue speaking with, receiving e-mails from those		7	Q. You wanted compliance to see incriminating e-mails?	
8	that were still in the industry after I left, that's right.		8	A. No, I didn't, but that wasn't the reason why I kept it out.	
9	Q. So you were receiving checks from them in 2010 and beyond,		9	Q. Well, is it because -- well, what is the reason?	
10	correct?		10	A. It's because I didn't want to create a paper trail within	
11	A. That's right.		11	the firm.	
12	Q. Okay. Now, let's talk about your preparation with the		12	Q. All right, you didn't want to create a paper trail within	
13	government in connection with this case. So, you began		13	the firm of incriminating evidence, is that your statement?	
14	cooperating at the end of 2010, correct?		14	A. Yes.	
15	A. Yes.		15	Q. Now, when you received all your e-mails from your friends,	
16	Q. How frequently have you met with them?		16	they came in on the level server, correct?	
17	A. I may have met with them 20 times during that entire		17	A. That's right.	
18	period, maybe 25. I'm not a hundred percent sure how many		18	Q. So the Danny Kuo e-mails that we spoke about before came to	
19	times.		19	you on the Level Global server, correct?	
20	Q. And you spent a lot of time preparing for trial, correct?		20	A. That's correct.	
21	A. I have.		21	Q. And the Tortora e-mails from Sandy Goyal, they came to you	
22	Q. And you've endeavored to review all your e-mails, correct?		22	on the Level Global server, correct?	
23	A. The ones that I've been shown, yes.		23	A. That's right.	
24	Q. Were you given access to e-mails that you could take home		24	Q. And it's your testimony that you were concerned about a	
25	or only look at them at the FBI office or prosecutor's office?		25	paper trail and that's why you didn't put things on hardware,	
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1	A. I don't recall ever being given something to take home.		1	is that right?	
2	Q. So all your review of the e-mails were in the government		2	A. That's right.	
3	offices, correct?		3	Q. And you were perfectly satisfied receiving these e-mails on	
4	A. I believe so, yes.		4	your Level Global server, correct?	
5	Q. And you looked at your phone records, correct?		5	A. No, I was not satisfied, I had many conversations with them	
6	A. I don't believe I was ever shown the phone records.		6	not to send them.	
7	Q. Any handwritten notes that you wrote?		7	Q. But you couldn't stop your friends from doing so?	
8	A. I was shown handwritten notes, yes.		8	A. I could have, but --	
9	Q. But it's mostly been e-mails, correct?		9	Q. You chose not to?	
10	A. Mostly e-mails, that's right.		10	A. That's right.	
11	Q. And you made best efforts to review all the e-mails that		11	Q. And you continued to receive Kuo e-mails on the Level	
12	could be conceivably relevant to this case, correct?		12	Global server, is that correct?	
13	A. I have no idea.		13	A. That's right.	
14	Q. You looked at as many e-mails as you could in response to		14	Q. Did I understand you to testify that Mr. Chiasson wanted	
15	the government's request. That was part of your cooperation,		15	things on a high level?	
16	correct?		16	A. Yes.	
17	A. I looked at all the e-mails they showed me.		17	Q. So does that include e-mails?	
18	Q. Let's just talk about e-mail traffic for a minute. So is		18	A. It does.	
19	it fair to say that if we see an e-mail to hardware that you		19	Q. So if you sent e-mails to Mr. Chiasson, they would be like	
20	submitted -- with me so far? That you made best efforts to		20	the e-mails you sent to compliance?	
21	keep out any kind of incriminating information?		21	A. I didn't send e-mails to compliance, so I don't have a	
22	A. I think that's generally fair.		22	basis to answer that question.	
23	Q. So if it goes to hardware, you don't think -- you didn't		23	Q. I'm sorry, I misspoke. I meant hardware.	
24	think there was anything wrong with it, correct?		24	A. Are you asking if the e-mails I sent to Mr. Chiasson were	
25	A. I tried to keep incriminating information out of hardware		25	the same as those sent to hardware?	

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<p>1 UNITED STATES DISTRICT COURT 2 SOUTHERN DISTRICT OF NEW YORK 3 -----x</p> <p>3 UNITED STATES OF AMERICA, 4 v. 12 Cr. 121 (RJS) 5 TODD NEWMAN, 6 ANTHONY CHIASSON, 7 Defendants. 8 -----x</p> <p>9 New York, N.Y. 10 December 6, 2012 11 2:05 p.m.</p> <p>11 Before: 12 HON. RICHARD J. SULLIVAN, 13 District Judge</p> <p>14 APPEARANCES</p> <p>15 PREET BHARARA 16 United States Attorney for the 17 Southern District of New York 18 ANTONIA APPS 19 JOHN ZACH 20 RICHARD TARLOWE 21 Assistant United States Attorneys</p> <p>19 SHEARMAN & STERLING 20 Attorneys for Defendant Newman 21 BY: STEPHEN R. FISHBEIN 22 JOHN A. NATHANSON</p> <p>22 STEPTOE & JOHNSON 23 Attorneys for Defendant Chiasson 24 BY: REID WEINGARTEN 25 ERIK KITCHEN MICHELLE LEVIN -and- MORVILLO LLP BY: GREGORY R. MORVILLO</p>		<p>1 Mr. Adondakis got compared to a number he got before. You see 2 in a lot of the e-mails that are set forth in the letter brief 3 we put forward, there is a lot of reference to checks and 4 contacts. Now Mr. Chiasson made the argument in his brief that 5 use of the word checks alone is not meaningful because it can 6 mean many different things, and the testimony has certainly 7 been that the word checks can mean many different things, but 8 it depends on context.</p> <p>9 When you look at the context here, which is the timing 10 of the updates or the checks -- and it is clear from the 11 e-mails and the instant messages with Mr. Ganek that there is 12 some source outside the firm that Mr. Adondakis is getting 13 information from. When you look at the nature of that 14 information, the specific numbers, and you combine it with the 15 timing, I think we meet our burden of the preponderance.</p> <p>16 THE COURT: All right. Mr. Morvillo.</p> <p>17 MR. MORVILLO: Well, just to respond to that. What I 18 am hearing Ms. App's say, at this point the word got, the fact 19 that he got a number means that they meet their burden on 20 conspiracy, on being a coconspirator, and that is preposterous.</p> <p>21 There are numbers that fly all over this business, in 22 every sell side research report, which there were 30 or 40 per 23 quarter or more. I'm sorry. 30 people that covered Dell per 24 quarter that come out with numbers. Every single one of them 25 has a gross margin and EPS. They all have numbers in them.</p>	
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<p>1 (Trial resumed; jury not present)</p> <p>2 THE COURT: All right. Let's I guess chat about the 3 issues that we have got on the table. The first is with 4 respect to whether David Ganek and Michael Steinberg are 5 unindicted coconspirators, namely, whether the government has 6 established by a preponderance that they were involved in the 7 same conspiracy as the defendants.</p> <p>8 So I have what the government and Mr. Morvillo have 9 given me for Steinberg. We have just really been relying on 10 talk, correct? Nobody submitted anything. Let's then start 11 with Ganek. Anything else anybody wants to say beyond what has 12 been introduced or submitted?</p> <p>13 MS. APPS: Your Honor, the only point that I would 14 make, and I went and looked back, the testimony on the call on 15 August 27 is there is actually more of it in the record after 16 looking at it further. It is not just the parts that I 17 referred the court to in the letter brief that we submitted, 18 but there is additional testimony where Mr. Adondakis says what 19 he talked about on the phone was that the information was 20 directionally consistent -- and I am quoting from page 1807 -- 21 with what they heard before and that the gross margins were 22 just a little below the number he had gotten before, and the 23 reason that he remembered -- then he goes on to explain the 24 reason he remembered that.</p> <p>25 So they are talking specific numbers that</p>		<p>1 They are all decimal points, they are all percentages. They 2 are all getting their information from someplace. Now whether 3 it is from each other or from the company or from channel 4 checks, there is a plethora of information in this record that 5 suggests that the word checks is not bad, that the word 6 contacts is not bad. All of these things do not bleed to the 7 notion that someone was a coconspirator, particularly in light 8 of the three or four times Mr. Adondakis said, I never told 9 Mr. Ganek the source.</p> <p>10 It is like they start 50 points down in a football 11 game and they have to come way back. They can't overcome that 12 problem, and that is a massive problem for them. They can't 13 overcome Mr. Adondakis' testimony with the rest of this 14 circumstantial evidence that is as consistent, if not more 15 consistent, with innocent behavior and industry standards and 16 industry practices than it is with something that some person 17 is thinking might have happened because they used the word 18 "got." It just doesn't meet the standard.</p> <p>19 Even if the standard is a minimal standard, it doesn't 20 meet it. Because their own witness goes against their own 21 theory of this, which is that it didn't happen. He didn't 22 know. He is thinking, well, maybe Mr. Chiasson told him, but 23 there is nothing in the record that suggests that Mr. Chiasson 24 told Mr. Ganek.</p> <p>25 The only evidence that we have that he knew Mr. Ganek</p>	

<p>CC6HNEW1 Page 3254</p> <p>1 knew or didn't know comes from Mr. Adondakis, and he said three 2 or four times, including on his direct testimony, that he never 3 told him. And on Nvidia it is even worse. There is nothing in 4 the record that suggests Mr. Ganek knew about the Nvidia 5 source, and the only evidence about whether Mr. Chiasson knew 6 of the Nvidia source is the negative. You yourself asked the 7 witness: Did you tell him the source, and he said no. So I 8 don't see how they can get past that to a preponderance based 9 on industry practices, industry standards. It just doesn't 10 meet the burden that they need to meet.</p> <p>11 I am happy to take their arguments one by one, but if 12 your Honor is satisfied, I will sit down.</p> <p>13 Checks and timing, those things don't suggest that 14 someone is in a conspiracy without much, much more. It doesn't 15 even come close.</p> <p>16 THE COURT: All right. I disagree with that, I have 17 to say. Having reviewed the record, exhibits and testimony, it 18 seems to me that the evidence related to Ganek is largely 19 circumstantial. Adondakis certainly did not say that he 20 expressly told Ganek. That point has been made by Mr. Morvillo 21 and it is accurate.</p> <p>22 But I do think that the rest of the fact would support 23 an inference by a preponderance that Mr. Ganek was aware of the 24 source and the nature of this information. I mean just by way 25 of example, Government Exhibit 438, leading up to July 2008,</p>	<p>CC6HNEW1 Page 3256</p> <p>1 Adondakis is not just any analyst who is crunching numbers; 2 that he's got a particular source.</p> <p>3 Then there is the conversation that takes place with 4 Adondakis, Alessi and Chiasson in which they discuss the source 5 and then immediately afterwards Adondakis is dispatched but 6 there is a meeting, a closed door meeting with Ganek, Alessi, 7 and Chiasson. I think that does support --</p> <p>8 MR. MORVILLO: Your Honor, if I might interrupt. I 9 think your Honor has that wrong. I think you are conflating 10 two different circumstances. There is an August 27th phone 11 call with Mr. Ganek, Mr. Chiasson, Mr. Brenner and 12 Mr. Adondakis on the phone. He puts in Mr. Alessi at some 13 point. He says he is not even really sure. That is a phone 14 call on August 27th. And on that phone call he does not 15 disclose the source of this information specifically.</p> <p>16 Then there is an August 11th meeting between Brenner, 17 Chiasson and Adondakis where they hand over -- he hands over 18 the expected value, and the expected value is where the number, 19 17.5, is in. It is listed as 45 percent chance of it 20 happening. The other number, the upside number is 18.5, listed 21 at 45 percent chance of happening. Both numbers on that. Then 22 Mr. Adondakis leaves and he says he sees Chiasson and Brenner 23 go into Ganek's office and talk. He doesn't know what is going 24 on in there.</p> <p>25 THE COURT: Yes, there is no dispute about that, but I</p>
<p>CC6HNEW1 Page 3255</p> <p>1 Dell quarterly earnings report, Ganek is expressing awareness 2 of and interest in Adondakis' Dell contact. After that there 3 is additional instances in which Ganek is aware that Adondakis 4 has a connection to folks at Dell. This is Government Exhibit 5 515. Ganek was aware that the Dell contact was providing 6 Adondakis with a series of incremental checks that are spaced 7 out over several weeks, which is consistent with financial 8 results being firmed up as the roll up process is taking place, 9 as the reporting date approaches. An example of that is 10 Government Exhibit 438.</p> <p>11 With respect to Nvidia, Ganek was aware that 12 Adondakis' reads would get, quote, firmer as the earnings 13 report approached, a trend that also the evidence introduced at 14 trial suggests is consistent with the roll up process. That is 15 Government Exhibit 907.</p> <p>16 At one point Adondakis was providing Dell checks to 17 Ganek during a black-out period for Dell. Ganek received again 18 precise information concerning Nvidia gross margins. That is 19 GX907. The large trading positions that Ganek is authorizing 20 shortly after the information on Dell and Nvidia is received, I 21 think also is circumstantial evidence of his knowledge. And 22 then there is the suggestion from statements made by Ganek, 23 although they don't talk about the source, but I think his 24 conversations with Adondakis during this period and on the few 25 occasions when they talk do suggest that he understands that</p>	<p>CC6HNEW1 Page 3257</p> <p>1 think the inference can be drawn, based on the totality of the 2 facts, that there is the discussion then about Adondakis' 3 source which is consistent with him being in the conspiracy.</p> <p>4 MR. MORVILLO: I don't think it can, your Honor, 5 because Mr. Ganek isn't in the office that day.</p> <p>6 THE COURT: I have no doubt you are going to make a 7 lot of arguments to the jury, and they might be very good ones 8 to make, but I think the issue for now is whether the 9 preponderance standard has been met with respect to 10 801(d)(2)(E), and I find that it does.</p> <p>11 MR. MORVILLO: I'm sorry, your Honor. How can the 12 standard be met specifically on the August 11th conversation if 13 Mr. Ganek isn't there.</p> <p>14 So the notion is that Mr. Chiasson and Mr. Brenner 15 walked into Mr. Ganek's office and he wasn't there and then he 16 is supposed to know what the source of the information is. 17 Being a coconspirator is not like having chicken pox. You 18 can't just be a coconspirator by being in the same room with 19 someone who has it.</p> <p>20 THE COURT: Mr. Morvillo, these are not advisory 21 decisions and it is not an advisory ruling.</p> <p>22 MR. MORVILLO: Then, look, I would move to preclude 23 this under 403.</p> <p>24 THE COURT: Overruled.</p> <p>25 So I am going to allow the Ganek exhibits in. That</p>

<p>CC6HNEW1 Page 3258</p> <p>1 is, the IMs and a couple of other exhibits that I reserved on. 2 MR. MORVILLO: Your Honor, under 403, this is late and 3 it is confusing. Particularly the IM is very confusing because 4 it is not talking about Dell. It is talking about Nvidia. If 5 I can find it, I will tell you exactly what I mean, if I have 6 it here. 7 I don't have it with me, but it is the IM that they 8 are talking about where he says, Mr. Alessi uses the word 9 silver bullet. That language is going to be used by this jury, 10 they are going to be invited to speculate they are talking 11 about a Dell source when it follows directly an Nvidia 12 conversation. They are talking about Nvidia. We don't have 13 information on Nvidia to up size the Nvidia position because we 14 don't have a silver bullet. In other words, we don't know what 15 we are doing in Nvidia. We don't have any -- we don't have the 16 best read on Nvidia. And read means research, it means thesis. 17 THE COURT: You can argue that certainly, but I think 18 a fair reading is he can update you on Nvidia as well. 19 MR. MORVILLO: That is right, and then the next line 20 is we don't have a silver bullet there, meaning at Nvidia, not 21 at Dell. 22 THE COURT: It doesn't say "there." I understand the 23 arguments. I think there are arguments to be made and that is 24 what lawyers should do. But with respect to the admissibility 25 of the evidence, I am going to allow it in.</p>	<p>CC6HNEW1 Page 3260</p> <p>1 specifically -- 2 THE COURT: Well, the header. It is a continuation of 3 the subject. 4 MR. FISHBEIN: That's right. Dell stuff. 5 THE COURT: "Please keep the Dell stuff especially on 6 the down low, just mentioning that because JT asked me 7 specifically to be extra sensitive with the info." 8 MR. FISHBEIN: Right. Your Honor, to get to the 9 point, I think it is a fair inference to say JT is Jesse 10 Tortora and that there was some discussion of Dell. What I 11 would say to your Honor is there was testimony in this case 12 from Mr. Tortora that even with completely legitimate 13 information he sought to restrict the circulation because 14 getting it out broadly would hurt the trade. I will just give 15 you an example. 16 He testified that he did copious research on which 17 analysts were good at certain stocks and he put together an 18 e-mail showing that Bear Stearns, in the case of Altera, had 19 made a lot of correct predictions. He forwarded it to Horvath. 20 This is page 452 of the transcript. And on direct he says, I 21 have done this exhaustive analysis to figure out who was good 22 on what. I sent it to Horvath and he says don't forward it 23 around. I believe that is a quote from the e-mail. 24 He explained that, that he doesn't want this 25 information getting out broadly. If we look just at this</p>
<p>CC6HNEW1 Page 3259</p> <p>1 So now let's move to the Steinberg exhibits. There 2 are only three, correct? 3 MR. FISHBEIN: Correct, your Honor. Just to give some 4 context, I agree with your Honor the issue is whether Michael 5 Steinberg is a knowing participant in the conspiracy. As I 6 said, we do not dispute that Horvath is part of the group that 7 shares information and that Horvath gave information to 8 Steinberg. The issue is whether Steinberg knew this was 9 improper in any way. There has been no testimony on that 10 because the government did not call Jon Horvath as a witness. 11 He is a cooperating witness. They can call him. 12 THE COURT: No question. 13 MR. FISHBEIN: We certainly can't presume that Horvath 14 would have testified that he told Steinberg. So I submit, your 15 Honor, the only evidence the government is putting forward here 16 are the three e-mails themselves. If we can go through those, 17 I can articulate the grounds of our motion to preclude these. 18 We will go through them chronologically. 19 The first is Government Exhibit 605, Monday, August 20 18th. The only relevant part of this, and I assume the only 21 part the government really wants to put in, is the bottom 22 e-mail from Horvath to Steinberg because the ones above that 23 talk about other people and don't have any apparent connection 24 to the events charged in this case. But in any event, that 25 lower one, he says: Just mentioning that JT asked me</p>	<p>CC6HNEW1 Page 3261</p> <p>1 e-mail, I submit to your Honor this is equally consistent with 2 legitimate information or not legitimate. This does not show 3 by a preponderance that it is illegitimate. 4 On the next one, which is 610, dated August 25th, and 5 for this one I think it is important to start at the beginning 6 of the chain, which is page 2. This starts with Horvath 7 describing a discussion with investor relations, Shep Dunlap. 8 We have heard a lot about him. And the subject line is Short 9 IR Conduct. 10 If you look at it -- I won't read the whole thing -- 11 it is about discussions with investor relations that are 12 totally legitimate, and the last sentence of that first 13 paragraph: "JT also spoke with them again and his check was 14 unchanged," suggesting that JT is speaking with investor 15 relations. 16 If there is any doubt about who JT was talking to, you 17 turn to the next page, the e-mail at 1:38 p.m. It continues 18 the discussion of summarizing discussions with Dell IR, and the 19 last line: "JT is also hearing that IR doesn't sound good." 20 So this is a discussion about investor relations, which is 21 legitimate. 22 Then you get up to the e-mail at 2:21. The subject 23 line is Still Short IR conversation, and there is a discussion 24 of some checks that Jesse Tortora did. I submit to your Honor 25 that in the context of this e-mail chain, talking about</p>

In The Matter Of:
UNITED STATES OF AMERICA, v
TODD NEWMAN,

December 10, 2012

SOUTHERN DISTRICT REPORTERS
500 PEARL STREET
NEW YORK, NY 10007
212 805-0330

Original File CCAHNEWf.txt

Min-U-Script® with Word Index

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1 Q. David Ganek was the principal owner of Level Global,
2 correct?
3 A. Yes.
4 Q. So he would be a big person in the investigation and object
5 of interest, fair?
6 A. He would have been an important person in the conversation,
7 yes.
8 Q. And it would be highly relevant information whether or not
9 the cooperator fingered Mr. Ganek as to knowing the source of
10 the information, fair?
11 MS. APPS: Objection.
12 THE COURT: Overruled. You can answer.
13 A. It would be important.
14 Q. That would be an important piece of information?
15 A. It would have been important that the cooperator told
16 Mr. Ganek that the Dell information was coming from someone
17 inside Dell.
18 Q. Now, it's your testimony here that Adondakis said just the
19 opposite, that he had not told Ganek that, correct?
20 A. Had not told him that the Dell information was coming from
21 someone inside Dell. He had no recollection of that.
22 Q. And it's your testimony he said that in this proffer at the
23 U.S. Attorney's Office on November 2, 2010, correct?
24 A. No. I recall -- I don't recall him saying that, so it
25 wasn't -- he wasn't saying that he gave the information to

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1 Mr. Chiasson and Mr. Ganek. It's a slight variation. It's not
2 the information from Chiasson -- giving the Dell information.
3 He gives the Dell information to Chiasson again, but he does
4 not disclose to Ganek that the information came from someone
5 inside Dell.
6 Q. Let's look at 3502-7, the 302, or your memo that we were
7 looking at before.
8 THE COURT: This is the 302?
9 MR. WEINGARTEN: Yes. 3502-7. That's a memo of
10 interview, your Honor.
11 THE COURT: This is by Agent Hinkle, right? You said
12 your memo.
13 Q. You signed off on this memo, correct?
14 A. I reviewed it, yes.
15 Q. Is it indicated anywhere in this entire memo that David
16 Ganek did not know the source of the information at Dell?
17 A. One more time?
18 Q. Is it indicated anywhere in this memo that Adondakis told
19 the government that Ganek did not know the source of the
20 information at Dell?
21 MS. APPS: Objection. Mischaracterizes earlier
22 testimony.
23 THE COURT: Sustained.
24 Q. In any memo of interview that you did or approved in this
25 investigation, is it ever reported that Mr. Adondakis never

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1 told Ganek the source of the Dell information?
2 A. I don't believe so.
3 Q. It's true, is it not, that notes were taken of the
4 interview at the government's offices on November 2, 2010?
5 A. Yes. Notes would have been taken, yes.
6 Q. And can you look at 3502-8.
7 Do you have that in front of you? Do you have the
8 notes? Let me give you a copy.
9 A. Thank you.
10 Q. Sure.
11 Is it fair to say those are handwritten notes taken of
12 the interview of Adondakis' proffer at the Federal Government?
13 A. Yes, sir.
14 Q. And are they your notes or Hinkle's notes?
15 A. I think -- they are not my notes and I believe there is a
16 third agent that's there at the time of the interview, an agent
17 by the name of Matthew Komar.
18 Q. And so it's normal practice for the FBI to take handwritten
19 notes at an interview, to make a record, and to assist in the
20 production of the memo interview, correct?
21 A. When covering a new topic, yes.
22 THE COURT: If you were covering a new topic?
23 THE WITNESS: Yes.
24 Q. What I would like you to do is take first 3502-7. That's
25 the memo of interview, correct?

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1 A. Yes.
2 Q. And let's just make sure that the notes of the interview
3 correspond to the memo of interview. It's the same briefing
4 that we are talking about, correct?
5 A. It is.
6 Q. Now, if you could turn to the seventh page of the
7 handwritten notes, can you see that that corresponds to the
8 paragraph that we were talking about in my first examination?
9 A. Yes.
10 Q. And the first sentence of the typewritten report reads:
11 Chiasson and Ganek were both interested in the Dell information
12 when Adondakis told them because the information came directly
13 from the contacts at Dell.
14 Do you see that?
15 MS. APPS: Objection.
16 THE COURT: Overruled.
17 Q. Let's look at the very top of the handwritten notes and
18 read what they say.
19 A. Yes, I've read it.
20 Q. Doesn't the notes also reflect that Adondakis said that
21 both Ganek and Anthony interested in Dell because of contacts.
22 And in the handwritten notes Ganek -- there is an arrow from
23 David to knew about contacts at Dell, right?
24 A. I see that, yes.
25 Q. That's what the notes reflect?

CCAMNEW2	Makol - redirect	Page 3505	CCAMNEW2	Page 3507
1	A. Knew about contacts about Dell.		1	charge conference at 9:00 and have the jury here at 10. If
2	Q. They reflect an arrow from the word David to knew about		2	it's not going to be that long, we can start at 10:00 tomorrow
3	contacts at Dell?		3	morning.
4	A. Correct.		4	THE COURT: Who is doing the main summation?
5	MR. WEINGARTEN: Thank you very much, sir.		5	MS. APPS: I am.
6	THE COURT: Any recross?		6	THE COURT: How long do you think it is?
7	MS. APPS: No.		7	MS. APPS: Maximum of three hours, your Honor. If we
8	THE COURT: Why don't we take a short break and then		8	start tomorrow morning with my summation, we could fit one
9	we will resume with the defense case.		9	defense counsel in the afternoon, we could put the next one the
10	All rise for the jury.		10	next morning, charge them Wednesday afternoon. That way they
11	(Jury not present)		11	can have the case by the end of the day Wednesday.
12	THE COURT: Agent Makol, you can take your time.		12	I think if your Honor is able to get us the charge,
13	(Witness excused)		13	and they have a couple of hours to review it, I would very much
14	THE COURT: Then we are going to go to Professor		14	like to have the charge conference today so we can proceed on
15	Jarrell.		15	the schedule that I just outlined.
16	MR. FISHBEIN: Then we have a few more documents and		16	THE COURT: It sounds like Mr. Morvillo is suggesting
17	then we are not done.		17	10:00 for summations anyway.
18	THE COURT: You are not going to call your expert?		18	MS. APPS: I don't know that one hour is realistic,
19	MR. MORVILLO: No. We are going to put some documents		19	number one, and, number two, I actually think that's a little
20	in, your Honor.		20	tough because I don't know where you are going to come out on
21	THE COURT: You think we will finish before lunch, or		21	some of these issues. It could change the way we do the
22	no.		22	summations. It's going to be sort of going on the fly.
23	MR. NATHANSON: We may, your Honor. I think the		23	I would respectfully submit that two hours is plenty
24	direct is maybe an hour, hour and a half. I am not sure.		24	of time for the two of them to confer. And if your Honor's
25	THE COURT: We have to figure out whether we are going		25	schedule permits, of course, we could fit in the charge
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1	to send the jury home and, if so, what we are going to tell		1	conference today. That way I am not trying to adjust a
2	them about tomorrow.		2	summation on the fly.
3	Why don't you guys take a break and we will talk about		3	THE COURT: You think you'll be three hours and, Mr.
4	timing. We need to have a charge conference and I have to get		4	Fishbein --
5	you -- this is sooner than I thought. I thought I would be		5	MR. FISHBEIN: It's going to be Mr. Nathanson.
6	able to get you the charge tonight and then we would have a		6	THE COURT: Mr. Nathanson. And how long do you think
7	charge conference tomorrow at some point.		7	it will be?
8	MR. MORVILLO: Your Honor, that would be fine with us.		8	MR. FISHBEIN: Three hours.
9	We were hoping we could have the charge conference tomorrow,		9	THE COURT: And how long do you think, Mr. Weingarten?
10	anyway, and have the evening to review the charge.		10	You are doing yours?
11	THE COURT: If we wrap up at 1:00 I can get you the		11	MR. WEINGARTEN: Yeah. I don't think that long.
12	charge in short order and then you could look at it for an hour		12	There is a lot to say.
13	and a half. It's not that different from what you already		13	THE COURT: Then a rebuttal. That's you, Mr. Zach.
14	propose. It's just a handful of spots where there are		14	MR. ZACH: Maybe an hour, your Honor.
15	disagreements.		15	MR. FISHBEIN: Your Honor, for what it's worth, on the
16	MR. MORVILLO: There may be factual issues that we		16	charge, there are some difficult issues, there is some
17	need to discuss with Mr. Newman's counsel. We may need to have		17	important legal issues. And we, too, would like some time to
18	longer than just two hours or three hours to discuss this. We		18	digest your proposed charge so we can be fully prepared as to
19	may need record cites to argue and we won't know that until we		19	which sections we really have an issue with and which we don't.
20	read it.		20	We will come earlier than 9, too, if you want.
21	THE COURT: I think I would like to have a charge		21	THE COURT: Let me think about it. I think we may try
22	conference today, if we can, just because I don't want -- if we		22	to do something this afternoon.
23	have a charge conference tomorrow, then the jury is not getting		23	Get a drink and I'll see you in a bit.
24	here until when? What would you be proposing?		24	(Recess).
25	MR. MORVILLO: I would be proposing that we have the		25	(Continued on next page)